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OFFICE OF PETITIONS

In re Patent of McIntyre et al.	:	
Patent No. 7,579,009	:	
Issue Date: August 25, 2009	:	DECISION ON REQUEST
Application No. 10/526,228	:	FOR RECONSIDERATION OF
Filing Date: March 1, 2005	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 15373.0002	:	

This is in response to the "Petition for Reconsideration of Patent Term Adjustment Under 37 CFR 1.705(d)" filed August 25, 2009. Patentees request the determination of patent term adjustment indicated on the issue notification (and on the patent) be corrected from zero (0) days to one hundred sixty-one (161) days.

The request for reconsideration of the patent term adjustment indicated on the patent is **dismissed**.

On August 25, 2009, the application matured into United States Patent No. 7,579,009, with a patent term adjustment of 0 days. This request for reconsideration was timely filed within two months of the issue date of the patent. See 37 C.F.R. § 1.705(d).

Patentees maintain entitlement to an additional portion of patent term which amounts to a total of 161 days which is 537 days of Office delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") reduced by 376 days of Applicant delay.

Patentees assert the date of commencement for the instant national stage application is March 6, 2005. The Office notes the date of commencement is actually March 7, 2005, because March 6, 2005, fell on a Sunday.¹ Thus, B Delay based on the commencement date and the issue date is 536 days. However, a request for continued examination was filed in this application on January 30, 2008.

Pursuant to 35 U.S.C. § 154(b)(1)(B), B Delay in this case does not include the time period from the date a request for continued examination was filed until the date the patent issued. A request for continued examination was filed in this application on January 30, 2008.

¹ See PCT Rule 80.5.

Specifically, 35 U.S.C. § 154(b)(1)(B) states, with emphasis added,

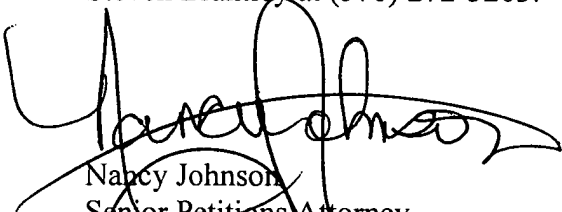
Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, *not including* — (i) any time consumed by continued examination of the application requested by the applicant under section 132(b)....

The date of commencement is March 7, 2005. The date three years after the commencement date is March 7, 2008. A Request for Continued Examination was filed January 30, 2008. Since the RCE was filed prior to the date three years after the date of commencement, the amount of B delay in the instant case is 0 days.

Patentees have not shown an increase in the patent term adjustment of 0 days on the patent is warranted. Therefore, the patent term adjustment remains 0 days.

Submission of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



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Office of Petitions